Lufkin v. *Harvey*, 131 Minn. 238, 154 N. W. 1097, L. R. A. 1916B, 1111. In these cases the burden of proof is on the father claiming immunity because of the emancipation. *Wallace* v. *Cox*, 136 Tenn. 69, 188 S. W. 611.

When the child attains his majority he is prima facie presumed to be emancipated. *Town of Poultney* v. *Glover*, 23 Vt. 328. And where the emancipation is by express contract either before or after majority, the contract is valid and irrevocable. *Weese* v. *Yokum*, 62 W. Va. 550, 59 S. E. 514; *Morse* v. *Welton*, 6 Conn. 547, 16 Am. Dec. 73. An attempted revocation of the emancipation which would defeat contract rights of the infant with third persons was not allowed. *Smith* v. *Gilbert*, 80 Ark. 525, 98 S. W. 115, 8 L. R. A. (N. S.) 1098. But see *Hood & Johnson* v. *Pelham, etc., Co.*, 5 Ala. App. 471, 59 South. 767.

The marriage of a minor daughter, although without the consent of the parent, operates as an emancipation. This rule is based on the ground of public policy; for to deny it would cause a conflict between the duties owed to her husband and those owed to her parents. *Aldrich* v. *Bennet*, 63 N. H. 451, 56 Am. Rep. 529. The same rule as to emancipation applies when an infant son marries with the consent of his parents. But when the consent of the parent is not obtained there is conflict as to whether or not the child is emancipated. Some cases hold that there is no emancipation. *White* v. *Henry*, 24 Me. 531; *Austin* v. *Austin*, 167 Mich. 206, 132 N. W. 495. The preferable view seems to be that a minor son's marriage emancipates him to an extent necessary for the support of his family. *Commonwealth* v. *Graham*, 157 Mass. 73; *Vanatta* v. *Carr*, 229 Ill. 27, 82 N. E. 267.

PARTNERSHIP—EXISTENCE OF RELATION—LIABILITY FOR WRONGFUL ACTS.—A., B. and C. entered into an agreement whereby A. was to contribute a certain tract of timber and a right of way to the timber; B. was to construct a railroad over this right of way and was to furnish railroad and milling equipment to saw the timber; C. was to cut and haul the timber to the mill. A., who owned the timber was to pay B. and C. a certain sum for their services and the use of their equipment. It was expressly provided that C., in cutting the timber, was to be an independent contractor, so that A. and B. should not be liable for his acts. C. in negligently operating the railroad burned the plaintiff's timber. A., B. and C. were sued as a partnership. *Held*, they are liable. *Davis* v. *Lumber Co.* (Ind.), 118 N. E. 371.

Partnerships may be classified as true partnerships and partnerships by estoppel. In the first case the parties have expressly contracted to form a partnership between themselves, but in the second, they are constituted a partnership as to third persons only because they have held themselves out as such. *Thompson* v. *Toledo Nat. Bank*, 111 U. S. 530. It is obvious that the partnership in the first case is dependent upon the express contract. In the latter the rule is sometimes stated that where the parties share profits they are regarded as partners, although no partnership existed or was contemplated between themselves. *Grace* v. *Smith*, 2 Wm. Blackstone 998; *Waugh* v. *Carver*, 2 H. Blackstone 235; *Wessels* v. *Weiss*, 166 Pa. St. 490, 31 Atl. 247. But shar-

ing of profits in itself is not the sole test of whether or not a partnership exists; it is only evidence to establish the relation. *Fletcher* v. *Palm Bros. & Co.*, 133 Fed. 462. The true test in ascertaining whether or not a partnership has been established is to determine whether there is a community of interest between the parties—a joining as principals in carrying on a business for their joint profit. *Ward* v. *Thompson*, 22 How. 330; *Meeham* v. *Valentine*, 145 U. S. 611. If there is such a relation then there is a partnership, but if no community of interest and of profit then the relationship has not been established as to third persons. *Day* v. *Stevens*, 88 N. C. 83, 43 Am. Rep. 732.

An agent or servant, whose compensation is measured by a certain proportion of the profit of the business is not thereby made a partner. *Holmes* v. *Old Colony R. Co.*, 5 Gray (Mass.) 58; *Beecher* v. *Bush*, 45 Mich. 188, 40 Am. Rep. 465. So also a loan from one man to another to be paid back from profits realized does not constitute a partnership. *Harvey* v. *Childs*, 28 Ohio St. 319, 22 Am. Rep. 387; *Clifton* v. *Howard*, 89 Mo. 192, 58 Am. Rep. 97; *Wilson* v. *Edmonds*, 130 U. S. 472. But if the community of interest is present, a partnership may be formed where one partner contributes services and a small part of the capital and the others the majority of the capital. *Beauregard* v. *Case*, 91 U. S. 134. And even where one advances the whole of the capital and the others only services, it constitutes a partnership if there is a community of interest. *Hockett* v. *Stanley*, 115 N. Y. 625. In Virginia the rule is apparently the same. *Miller* v. *Simpson*, 107 Va. 476, 59 S. E. 378, 18 L. R. A. (N. S.) 962 and note; *Jones* v. *Murphy*, 93 Va. 214, 24 S. E. 825. Where there is an express agreement to form a partnership each partner is of course liable for the acts of the other. In such case the liability grows out of the contract creating the partnership. *Brown* v. *Higgingbotham*. 5 Leigh (Va.) 583, 27 Am. Dec. 618; *Commercial Bank* v. *Miller*, 96 Va. 357, 31 S. E. 812. But where there is no partnership *inter sese*, but only as to third persons, the liability of the person held out as a partner is based upon the doctrine of estoppel. *Alabama Fertilizer Co.* v. *Reynolds*, 85 Ala. 19, 4 South. 639; *Seabury* v. *Bolles*, 51 N. J. L. 103, 11 L. R. A. 136, 16 Atl. 54. But where one credits an ostensible partner, not knowing another person to be connected with him he cannot hold such other person unless actually a partner. *Wright* v. *Powell*, 8 Ala. 560; *Webster* v. *Clark*, 34 Fla. 637, 27 L. R. A. 126, 43 Am. Rep. 217, 16 South. 601.

The decision in the instant case seems unsound. There is no partnership between the parties by the contract for there is no community of interest in the enterprise, but only an independent hiring. There is no liability created by estoppel because no third person has been induced to treat them as a partnership through their holding out.